

111TH CONGRESS
2D SESSION

H. R. 6261

To amend titles XVIII and XIX of the Social Security Act to improve oversight of nursing facilities under the Medicare and Medicaid programs by ensuring adequate, trained surveyors, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 29, 2010

Ms. ROYBAL-ALLARD introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend titles XVIII and XIX of the Social Security Act to improve oversight of nursing facilities under the Medicare and Medicaid programs by ensuring adequate, trained surveyors, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Nursing Home Patient
5 Protection and Standards Act”.

1 **SEC. 2. IMPROVING THE RIGOR OF TESTING FOR SUR-**
 2 **VEYORS.**

3 (a) **MEDICARE.**—Section 1819(g)(2)(E)(iii) of the
 4 Social Security Act (42 U.S.C. 1395i–3(g)(2)(E)(iii)) is
 5 amended by adding the following at the end: “The testing
 6 program must be sufficiently rigorous (as determined by
 7 the Secretary) to ensure that surveyors are adequately
 8 prepared to survey and certify facilities in a consistent and
 9 accurate manner.”

10 (b) **MEDICAID.**—Section 1919(g)(2)(E)(iii) of the So-
 11 cial Security Act (42 U.S.C. 1396r(g)(2)(E)(iii)) is
 12 amended by adding the following at the end: “The testing
 13 program must be sufficiently rigorous (as determined by
 14 the Secretary) to ensure that surveyors are adequately
 15 prepared to survey and certify facilities in a consistent and
 16 accurate manner.”

17 **SEC. 3. ENSURING ADEQUATE STAFFING AND TRAINING**
 18 **FOR STATE SURVEYS OF NURSING HOMES.**

19 (a) **MEDICARE.**—Section 1819(g)(2)(E) of the Social
 20 Security Act (42 U.S.C. 1395i–3(g)(2)(E)) is amended by
 21 adding at the end the following:

22 “(iv) **ADEQUATE QUALIFIED STAFF**
 23 **FOR SURVEY TEAMS.**—The Secretary, in
 24 consultation with the advisory committee
 25 under subparagraph (F), shall establish re-
 26 quirements—

1 “(I) for the qualifications and
2 compensation of members of a survey
3 team under this subsection; and

4 “(II) that a State employs an
5 adequate number of individuals as
6 members of survey teams to ensure
7 adequate oversight of skilled nursing
8 facilities.

9 “(v) CONTINUING EDUCATION.—In
10 addition to the training and testing pro-
11 gram required under clause (iii), the Sec-
12 retary shall require that State and Federal
13 surveyors regularly complete an adequate
14 amount (as determined by the Secretary)
15 of continuing education courses that meet
16 requirements determined by the Secretary
17 for content and the rigor of the material
18 covered by such courses. An individual
19 shall not serve as a member of a survey
20 team unless the individual is in compliance
21 with the requirements of this clause.”.

22 (b) MEDICAID.—Section 1919(g)(2)(E) of the Social
23 Security Act (42 U.S.C. 1396r(g)(2)(E)) is amended by
24 adding at the end the following:

1 “(iv) ADEQUATE QUALIFIED STAFF
2 FOR SURVEY TEAMS.—The Secretary, in
3 consultation with the advisory committee
4 under subparagraph (F), shall establish re-
5 quirements—

6 “(I) for the qualifications and
7 compensation of members of a survey
8 team under this subsection; and

9 “(II) that a State employs an
10 adequate number of individuals as
11 members of survey teams to ensure
12 adequate oversight of nursing facili-
13 ties.

14 “(v) CONTINUING EDUCATION.—In
15 addition to the training and testing pro-
16 gram required under clause (iii), the Sec-
17 retary shall require that State and Federal
18 surveyors regularly complete an adequate
19 amount (as determined by the Secretary)
20 of continuing education courses that meet
21 requirements determined by the Secretary
22 for content and the rigor of the material
23 covered by such courses. No individual
24 shall serve as a member of a survey team

1 unless the individual is in compliance with
 2 the requirements of this clause.”.

3 **SEC. 4. ENSURING THE INDEPENDENCE AND IMPARTIALITY**
 4 **OF SURVEYORS.**

5 (a) WHISTLE BLOWER PROTECTIONS.—

6 (1) MEDICARE.—Section 1819(g) of the Social
 7 Security Act (42 U.S.C. 1395i–3(g)) is amended by
 8 adding the following at the end:

9 “(6) REPORTING OF INACCURACIES.—

10 “(A) REPORTING REQUIREMENT.—A cov-
 11 ered individual shall report to the Secretary any
 12 instance in which the individual suspects that—

13 “(i) a survey under this subsection
 14 fails to report or under reports an issue in
 15 a facility that could impact the safety or
 16 quality of care of the residents in such fa-
 17 cility; or

18 “(ii) a member of the survey team or
 19 an employee of the State survey agency
 20 was inappropriately induced (through the
 21 offering of monetary awards or through
 22 undue pressure) to alter the results of the
 23 survey.

24 “(B) RESPONSES TO REPORT.—If the Sec-
 25 retary receives a report under subparagraph

1 (A), the Secretary shall take appropriate action,
2 as determined by the Secretary, to ensure the
3 accuracy of the survey.

4 “(C) WHISTLE BLOWER PROTECTIONS.—
5 With respect to a covered individual, a State
6 may not—

7 “(i) discharge, demote, suspend,
8 threaten, harass, or deny a promotion or
9 other employment-related benefit to such
10 individual, or in any other manner dis-
11 criminate against an individual in the
12 terms and conditions of employment be-
13 cause the individual submitted a report
14 under subparagraph (A); or

15 “(ii) file a complaint or a report
16 against the individual with the appropriate
17 State professional disciplinary agency be-
18 cause the individual submitted a report
19 under subparagraph (A).

20 “(D) REMEDY FOR VIOLATIONS.—If the
21 Secretary finds that a State has violated the
22 prohibitions under subparagraph (C), the Sec-
23 retary shall provide for an appropriate remedy.

24 “(E) REQUIREMENT TO POST NOTICE.—
25 Each State shall post conspicuously in an ap-

1 appropriate location a sign (in a form specified by
 2 the Secretary) specifying the rights of covered
 3 individuals under this section. Such sign shall
 4 include a statement that a covered individual
 5 may file a complaint with the Secretary against
 6 the State for violating the provisions of this
 7 paragraph and information with respect to the
 8 manner of filing such a complaint.

9 “(F) COVERED INDIVIDUAL DEFINED.—

10 For purposes of this paragraph, the term ‘cov-
 11 ered individual’ means an individual—

12 “(i) who is a member of a State sur-
 13 vey team under this subsection; or

14 “(ii) who is an employee of the State
 15 department or agency that conducts sur-
 16 veys under this section.”.

17 (2) MEDICAID.—Section 1919(g) of the Social
 18 Security Act (42 U.S.C. 1396r(g)) is amended by
 19 adding the following at the end:

20 “(6) REPORTING OF INACCURACIES.—

21 “(A) REPORTING REQUIREMENT.—A cov-
 22 ered individual shall report to the Secretary any
 23 instance in which the individual suspects that—

24 “(i) a survey under this subsection
 25 fails to report or under reports an issue in

1 a facility that could impact the safety or
2 quality of care of the residents in such fa-
3 cility; or

4 “(ii) a member of the survey team or
5 an employee of the State survey agency
6 was inappropriately induced (through the
7 offering of monetary awards or through
8 undue pressure) to alter the results of the
9 survey.

10 “(B) RESPONSE TO REPORTS.—If the Sec-
11 retary receives a report under subparagraph
12 (A), the Secretary shall take appropriate action,
13 as determined by the Secretary, to ensure the
14 accuracy of the survey.

15 “(C) WHISTLE BLOWER PROTECTIONS.—
16 With respect to a covered individual, a State
17 may not—

18 “(i) discharge, demote, suspend,
19 threaten, harass, or deny a promotion or
20 other employment-related benefit to such
21 individual, or in any other manner dis-
22 criminate against an individual in the
23 terms and conditions of employment be-
24 cause the individual submitted a report
25 under subparagraph (A); or

1 “(ii) file a complaint or a report
2 against the individual with the appropriate
3 State professional disciplinary agency be-
4 cause the individual submitted a report
5 under subparagraph (A).

6 “(D) PENALTIES FOR RETALIATION.—If
7 the Secretary finds that a State has violated the
8 prohibitions under subparagraph (C), the Sec-
9 retary shall provide for a reduction of the pay-
10 ment otherwise made to the State under section
11 1903(a)(7), with respect to a quarter, equal to
12 5 percent. A State that is dissatisfied with the
13 Secretary’s findings under this subparagraph
14 may obtain reconsideration and review of the
15 findings under section 1116 in the same man-
16 ner as a State may seek reconsideration and re-
17 view under that section of the Secretary’s deter-
18 mination under section 1116(a)(1).

19 “(E) REQUIREMENT TO POST NOTICE.—
20 Each State shall post conspicuously in an ap-
21 propriate location a sign (in a form specified by
22 the Secretary) specifying the rights of covered
23 individuals under this section. Such sign shall
24 include a statement that a covered individual
25 may file a complaint with the Secretary against

1 the State for violating the provisions of this
2 paragraph and information with respect to the
3 manner of filing such a complaint.

4 “(F) COVERED INDIVIDUAL DEFINED.—
5 For purposes of this paragraph, the term ‘cov-
6 ered individual’ means an individual—

7 “(i) who is a member of a State sur-
8 vey team under this subsection; or

9 “(ii) who is an employee of the State
10 department or agency that conducts sur-
11 veys under this section.”.

12 (b) PENALTIES FOR INAPPROPRIATELY INFLU-
13 ENCING A SURVEYOR.—

14 (1) MEDICARE.—Section 1819(g)(2)(E) of the
15 Social Security Act (42 U.S.C. 1395i–3(g)(2)(E)),
16 as amended by section 3(a), is further amended by
17 adding the following at the end:

18 “(vi) PENALTIES FOR INAPPROPRI-
19 ATELY INFLUENCING A SURVEYOR.—Any
20 individual (including an employee of a
21 skilled nursing facility or any affiliated
22 corporate entity, a representative of the
23 skilled nursing facility industry, a member
24 of a State survey team, an employee of the
25 State department or agency that conducts

1 surveys under this section, or an elected
2 official) who attempts to inappropriately
3 influence, as determined by the Secretary
4 through regulations, the results of a survey
5 under this subsection or the actions of a
6 member of a survey team or an employee
7 of a survey agency under this subsection
8 shall be subject to a civil money penalty
9 not to exceed \$10,000. The provisions of
10 section 1128A (other than subsections (a)
11 and (b)) shall apply to a civil money pen-
12 alty under the previous sentence in the
13 same manner as such provisions apply to a
14 penalty or proceeding under section
15 1128A(a).”.

16 (2) MEDICAID.—Section 1919(g)(2)(E) of the
17 Social Security Act (42 U.S.C. 1396r(g)(2)(E)), as
18 amended by section 3(b), is further amended by add-
19 ing at the end the following:

20 “(vi) PENALTIES FOR INAPPROPRI-
21 ATELY INFLUENCING A SURVEYOR.—Any
22 individual (including an employee of a
23 nursing facility or any affiliated corporate
24 entity, a representative of the nursing fa-
25 cility industry, a member of a State survey

1 team, an employee of the State department
2 or agency that conducts surveys under this
3 section, or an elected official) who at-
4 tempts to inappropriately influence, as de-
5 termined by the Secretary through regula-
6 tions, the results of a survey under this
7 subsection or the actions of a member of a
8 survey team or an employee of a survey
9 agency under this subsection shall be sub-
10 ject to a civil money penalty not to exceed
11 \$10,000. The provisions of section 1128A
12 (other than subsections (a) and (b)) shall
13 apply to a civil money penalty under the
14 previous sentence in the same manner as
15 such provisions apply to a penalty or pro-
16 ceeding under section 1128A(a).”.

17 (3) CONFORMING AMENDMENTS.—

18 (A) Section 1819(f)(2)(B)(iii)(I)(c) of the
19 Social Security Act is amended by inserting “,
20 a civil monetary penalty described in section
21 1919(g)(2)(E)(vi) of not less than \$10,000”
22 after “of not less than \$5,000”.

23 (B) Section 1919(f)(2)(B)(iii)(I)(c) of the
24 Social Security Act is amended by inserting “,
25 a civil monetary penalty described in

1 (g)(2)(E)(vi) of not less than \$10,000” after
2 “of not less than \$5,000”.

3 **SEC. 5. ADVISORY COMMITTEE.**

4 (a) MEDICARE.—Section 1819(g)(2) of the Social Se-
5 curity Act (42 U.S.C. 1395i–3(g)(2)) is amended by add-
6 ing at the end the following:

7 “(F) ADVISORY COMMITTEE.—

8 “(i) ESTABLISHMENT.—The Secretary
9 shall establish an advisory committee on
10 surveys under this paragraph.

11 “(ii) MEMBERSHIP.—The membership
12 of the advisory committee under clause (i)
13 shall include advocates for residents of
14 skilled nursing facilities, members of sur-
15 vey teams under this subsection, and nurs-
16 ing home administrators, directors of nurs-
17 ing, registered nurses, and other skilled
18 nursing facility stakeholders.

19 “(iii) RECOMMENDED STANDARDS.—
20 The advisory committee under clause (i)
21 shall make recommendations to the Sec-
22 retary on standards for—

23 “(I) the adequate staffing of sur-
24 vey teams under this subsection;

1 “(II) the training of members of
2 such teams; and

3 “(III) disclosing any contact be-
4 tween such members and individuals
5 associated with skilled nursing facili-
6 ties, and limiting such contact to pre-
7 vent inappropriate influence of such
8 members by such individuals.

9 “(iv) OTHER RECOMMENDATIONS.—
10 The advisory committee under clause (i)
11 may also make recommendations to the
12 Secretary on any other issue that would
13 improve the survey process under this
14 paragraph.”.

15 (b) MEDICAID.—Section 1919(g)(2) of the Social Se-
16 curity Act (42 U.S.C. 1396r(g)(2)) is amended by adding
17 at the end the following:

18 “(F) ADVISORY COMMITTEE.—

19 “(i) ESTABLISHMENT.—The Secretary
20 shall establish an advisory committee on
21 surveys under this paragraph.

22 “(ii) MEMBERSHIP.—The membership
23 of the advisory committee under clause (i)
24 shall include advocates for residents of
25 nursing facilities, members of survey teams

1 under this subsection, and nursing home
2 administrators.

3 “(iii) RECOMMENDED STANDARDS.—
4 The advisory committee under clause (i)
5 shall make recommendations to the Sec-
6 retary on standards for—

7 “(I) the adequate staffing of sur-
8 vey teams under this subsection;

9 “(II) the training of members of
10 such teams; and

11 “(III) disclosing any contact be-
12 tween such members and individuals
13 associated with nursing facilities, and
14 limiting such contact to prevent inap-
15 propriate influence of such members
16 by such individuals.

17 “(iv) OTHER RECOMMENDATIONS.—
18 The advisory committee under clause (i)
19 may also make recommendations to the
20 Secretary on any other issue that would
21 improve the survey process under this
22 paragraph.”.

23 **SEC. 6. REVIEW OF SURVEYS.**

24 (a) MEDICARE.—Section 1819(g)(2)(D) of the Social
25 Security Act (42 U.S.C. 1395i–3(g)(2)(D)) is amended—

1 (1) by striking “Each State” and inserting the
2 following:

3 “(i) IN GENERAL.—Each State”; and

4 (2) by adding at the end the following new
5 clause:

6 “(ii) REVIEW OF SURVEYS.—The su-
7 pervisors of the survey teams shall review
8 each survey conducted under this sub-
9 section to ensure that any issues that im-
10 pact quality of care that are identified by
11 such surveys are consistently and appro-
12 priately described and rated by the survey
13 teams.”.

14 (b) MEDICAID.—Section 1919(g)(2)(D) of the Social
15 Security Act (42 U.S.C. 1396r(g)(2)(D)) is amended—

16 (1) by striking “Each State” and inserting the
17 following:

18 “(i) IN GENERAL.—Each State”; and

19 (2) by adding at the end the following new
20 clause:

21 “(ii) REVIEW OF SURVEYS.—The su-
22 pervisors of the survey teams shall review
23 each survey conducted under this sub-
24 section to ensure that any issues that im-
25 pact quality of care that are identified by

1 such surveys are consistently and appro-
2 priately described and rated by the survey
3 teams.”.

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